(3) (1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR.

WRIT PETITION NO. 318 OF 2006. **Single Bench**

PETITIONER

1. All India , Engineers & General Mazdoor Union having its Registered Office at Registration No. 2566 through its Secretary General, E – 127, Karampura, New Delhi 110 015.

2. Shri K K Shukla, Son of late Sri Balgovind Shukla, E – 127, Karampura, New Delhi 110 015.

P.R. No. 1350/06
Presented by Shri Sunita Jain
dated 16/2/06

VERSUS

RESPONDENTS

1. State of Chhattisgarh through the Secretary, Department of Finance, Government of Chhattisgarh, D.K.S. Bhawan, Mantralaya, Raipur.

2. The Commissioner (Excise), Chhattisgarh, Excise Office, Raipur (Chhattisgarh).

3. M/s. Kedia Castle Delleon Industries Ltd, Kumhari, District: Durg (CG).

4. The Labour Commissioner, Chhattisgarh, Raipur (CG).

5. Excise Warehouse, Raipur Road, Bilaspur.

6. Excise Warehouse, Sakti, District District Janjgir-Champa (CG).

7. Excise Warehouse, Baloda Bazar, District Raipur

8. Excise Warehouse, Kedia Distilleries Bilaspur

9. Excise Warehouse, Mungeli, District Bilaspur.

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, ORDER / ORDERS, DIRECTION / DIRECTIONS

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 1318 of 2006

Petitioners	All India Engineers & General Mazdoor Union and another
	Versus
Respondents	State of Chhattisgarh and others.

Shri R. S. Marhas, counsel for the petitioners.
Shri Satish Gupta, Deputy G.A. for the State/ respondents No.1, 2, 4 to 9.
Shri Abhishekh Sinha, counsel for respondent No. 3.

ORDER

(Passed on 10th Day of January, 2007)

The petitioners were appointed as Labourers by the Contractors working in the various Warehouses of the State Government. By way of this writ petition, the petitioners seek the following reliefs :

> "7.1 To issue a writ in the nature of mandamus directing the respondents to departmentalize the labour employed in the Warehouse under the control of respondent Excise Department and engage in the operation of essencing, colouring, reducing, blending and ultimately bottling, sealing and labeling.
>
> 7.2. Alternatively to issue a mandamus to the respondents to ensure the compliance of all the Labour Laws including the Factory Act, Payment of Gratuity Act and the benefits of Employees Provident Funds (Miscellaneous Provision Act) and other terminal benefits as payable to the departmental labours.
>
> 7.3 To issue a writ of mandamus to the respondents to ensure besides the above benefits the continuity of service and service conditions.

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7.4 This Hon'ble Court be pleased to direct the respondents by issuing a writ in the nature of mandamus for making payment of outstanding arrears to the members of the petitioner's union with interest @ 18% per annum from the date of approval till payment.

7.5 This Hon'ble Court be pleased to issue a writ in the nature of mandamus directing the authorities to comply with the provisions of Labour Enactments in so far as arrangement for labour facilities are concerned.

7.6 Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case may also kindly be passed in favour of the members of the petitioner's Union and against the respondents.

"

(2) The first relief is with regard to the direction to the respondents to departmentalize the labour employed in the Warehouse under the control of respondent – Excise Department. The second alternative relief is for a direction to the respondents to ensure the compliance of all the Labour Laws. The above stated reliefs cannot be granted on the sole ground that the appointment of the members of the petitioner's union is not in accordance with the constitutional scheme of the employment. The members of the petitioner's union were appointed by the private contractors for working in the Government Warehouses.

(3) In view of the settled position of law that the employees appointed *de hors* of constitutional scheme of employment or not in accordance with the rules, regulations and circulars as framed under the proviso to Article 309 of the Constitution of India, have no right to the post. Granting the above reliefs means granting a direction to the respondents to regularise

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the members of the petitioner's union who were not appointed in accordance with law.

(4) With the regard to the applicability of Labour Laws, the petitioner's union is at liberty to approach the appropriate forum. The said relief cannot be granted by this Court in exercise of its discretionary power under Article 226 of the Constitution of India. The petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K.Agnihotri
Judge

Subhy